



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARTURO ESTRADA,) NO. CV 09-2079 DDP (SS)
Plaintiff,)
v.) MEMORANDUM AND ORDER DISMISSING
MIGUEL MUÑOZ, et al.,) COMPLAINT WITH LEAVE TO AMEND
Defendants.)

Plaintiff, a state prisoner proceeding pro se, filed a Complaint pursuant to 42 U.S.C. § 1983 (the "Complaint") on November 6, 2009 against Miguel Munoz, a Riverside County deputy sheriff; the County of Riverside; the Riverside County Sheriff's Department ("RCSD"); and the Riverside County District Attorney. For the reasons stated below, the Complaint is dismissed with leave to amend.

Congress has mandated that district courts perform an initial screening of complaints in civil actions where a prisoner seeks redress from a governmental entity or employee. 28 U.S.C. § 1915A(a). This Court may dismiss such a complaint, or any portions thereof, before

1 service of process if it concludes that the complaint (1) is frivolous
2 or malicious, (2) fails to state a claim upon which relief can be
3 granted, or (3) seeks monetary relief from a defendant who is immune
4 from such relief. 28 U.S.C. § 1915A(b); see also Lopez v. Smith, 203
5 F.3d 1122, 1126 & n.7 (9th Cir. 2000) (en banc).

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7 **ALLEGATIONS OF THE COMPLAINT**

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9 Plaintiff claims that Deputy Munoz intercepted Plaintiff's legal
10 and personal mail while Plaintiff was held at the Robert Presley
11 Detention Center in Riverside, California. Deputy Munoz then allegedly
12 shared the mail with the Riverside County District Attorney, who used
13 its contents in Plaintiff's prosecution. Deputy Munoz also allegedly
14 used the mail for his own benefit in a dispute over custody of his
15 daughter. (See Complaint at 5 & exh. A at 4-7).

16

17 Plaintiff asks for money damages; an order requiring disclosure of
18 misuse of the mail; a "finding of wrong doing by each of the
19 defendants"; retrial or dismissal of the criminal charges against him;
20 an investigation of Defendants practices regarding prisoner mail; and
21 such other relief as the Court deems just and proper. (Id. at 6).

22

23 **DISCUSSION**

24

25 Under 28 U.S.C. § 1915A(b), the Court must dismiss Plaintiff's
26 Complaint due to multiple defects in pleading. Pro se litigants in
27 civil rights cases, however, must be given leave to amend their
28 complaints unless it is absolutely clear that the deficiencies cannot be

1 cured by amendment. Lopez, 203 F.3d at 1127-29; see also Lucas v. Dep't
2 of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Karim-Panahi v.
3 Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988).
4 Accordingly, the Court grants Plaintiff leave to amend, as indicated
5 below.¹

6

7 **A. Plaintiff's Claim Is Barred By The Doctrine Set Forth In Heck v.**
8 **Humphrey**

9

10 In Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d
11 383 (1994), the Supreme Court held:

12

13 [I]n order to recover damages for allegedly
14 unconstitutional conviction or imprisonment, or for other harm
15 caused by actions whose unlawfulness would render a conviction
16 or sentence invalid, a § 1983 plaintiff must prove that the
17 conviction or sentence has been reversed on direct appeal,
18 expunged by executive order, declared invalid by a state
19 tribunal authorized to make such determination, or called into
20 question by a federal court's issuance of a writ of habeas
21 corpus. A claim for damages bearing that relationship to a

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27 ¹ Magistrate judges may dismiss a complaint with leave to amend
28 without approval of the district judge. McKeever v. Block, 932 F.2d
795, 798 (9th Cir. 1991).

1 conviction or sentence that has not been so invalidated is not
2 cognizable under § 1983.

3

4 *Id.* at 486-87 (footnote and citation omitted).

5

6 Under Heck, a Section 1983 complaint must be dismissed if judgment
7 in favor of the plaintiff would undermine the validity of his conviction
8 or sentence, unless the plaintiff can demonstrate that the conviction or
9 sentence has already been invalidated. *Id.* at 487; see also Harvey v.
10 Waldron, 210 F.3d 1008, 1013 (9th Cir. 2000). Conversely, as the Heck
11 Court observed, when "the plaintiff's action, even if successful, will
12 not demonstrate the invalidity of any outstanding criminal judgment
13 against the plaintiff, the action should be allowed to proceed, in the
14 absence of some other bar to the suit." Heck, 512 U.S. at 487 (footnote
15 omitted); see also Ove v. Gwinn, 264 F.3d 817, 822 (9th Cir. 2001)
16 (quoting Heck).

17

18 Here, there is no showing by Plaintiff that the conviction which
19 resulted in his incarceration was either invalidated or overturned.
20 Indeed, Plaintiff's request that the criminal charges against him be
21 retried or dismissed indicates that his conviction is still valid. As
22 such, his claim that Defendants actively misused or allowed the misuse
23 of his mail in order to procure his conviction appears to be barred by
24 the doctrine announced in Heck. This claim is therefore dismissed, with
25 leave to amend. In any amended complaint, Plaintiff is advised to
26 consider the Heck doctrine if he chooses to plead claims that implicate
27 the validity of his conviction and current incarceration. The proper
28 vehicle for such a challenge is generally a habeas action and not a

1 civil rights complaint under Section 1983. See Hill v. McDonough, 547
2 U.S. 573, 579, 126 S. Ct. 2096, 165 L. Ed. 2d 44 (2006) (quoting
3 Muhammad v. Close, 540 U.S. 749, 750, 124 S. Ct. 1303, 158 L. Ed. 2d 32
4 (2004) (per curiam)). Plaintiff is further advised that a plaintiff may
5 request, and a court may award, monetary, declaratory, or injunctive
6 relief in a Section 1983 case. See, e.g., Anderson v. Warner, 451 F.3d
7 1063, 1070 (9th Cir. 2006). To the extent that Plaintiff requests any
8 other type of relief, the Court is without authority to grant it in a
9 case under Section 1983.

10

11 **B. Plaintiff Fails To State A Claim Against A Municipal Entity**

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13 The Complaint names the County and the RCSD as defendants.
14 (Complaint at 1, 3). When an individual sues a local government for
15 violation of his constitutional rights, the municipality is liable if
16 the individual can establish that the local government "had a deliberate
17 policy, custom, or practice that was the 'moving force' behind the
18 constitutional violation he suffered." Galen v. County of Los Angeles,
19 477 F.3d 652, 667 (9th Cir. 2007) (quoting Monell v. Dep't of Soc.
20 Servs., 436 U.S. 658, 694-95, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978)).
21 In Monell, however, the Supreme Court specifically rejected governmental
22 liability based on the doctrine of respondeat superior. Monell, 436
23 U.S. at 691-94.

24

25 Here, Plaintiff alleges that the County and the RCSD are subject to
26 liability because they "allowed [their] employee, a Deputy Sheriff, to
27 use his authority to intercept [Plaintiff's] personal and legal mail
28 from jail." Plaintiff identifies no specific policy that caused the

1 alleged violation. Insofar as Plaintiff is suing municipal entities,
2 he must identify some official municipal policy that violated his
3 constitutional rights. Monell, 436 U.S. at 690-91; Christie v. Iopa,
4 176 F.3d 1231, 1235 (9th Cir. 1999). Plaintiff is granted leave to do
5 so. Accordingly, the Complaint is dismissed with leave to amend.

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7 C. **The Riverside County District Attorney Is Immune From Suit**

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9 Plaintiff has named the Riverside County District Attorney as a
10 defendant, asserting that he knowingly received mail protected by the
11 attorney-client privilege "and used the contents of that privileged
12 communication to prosecute [Plaintiff]." However, a prosecutor is
13 entitled to absolute immunity under Section 1983 for conduct
14 "intimately associated with the judicial phase of the criminal process,"
15 (Imbler v. Pachtman, 424 U.S. 409, 431, 47 L. Ed. 2d 128, 96 S. Ct. 984
16 (1976)) and "occur[ing] in the course of his role as an advocate for the
17 State" (Buckley v. Fitzsimmons, 509 U.S. 259, 273, 113 S. Ct. 2606, 125
18 L. Ed. 2d 209 (1993)). Thus, the claim against the district attorney
19 appears to be barred by prosecutorial immunity and is dismissed with
20 leave to amend.

21

22 D. **Plaintiff's Claim Appears To Be Time-Barred**

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24 The statute of limitations for Section 1983 claims in California is
25 two years. See Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004).
26 Additionally, "California's equitable tolling doctrine operates to toll
27 a statute of limitations for a claim asserted by a continuously confined
28 civil detainee who has pursued his claim in good faith." Id. at 930.

1 Tolling is available for a period of up to two years. Id. at 927. "A
2 statute of limitations under [Section] 1983 . . . begins to run when the
3 cause of action accrues, which is when the plaintiffs know or have
4 reason to know of the injury that is the basis of their action." RK
5 Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1058 (9th Cir. 2002).
6

7 Plaintiff claims the conduct giving rise to this action occurred
8 between December 1, 2002 and February 28, 2004. (Complaint at 3, 5).
9 If the cause of action accrued on the latest of those dates and if
10 Plaintiff is entitled to tolling, the limitations period ended on
11 February 28, 2008. Plaintiff did not file this action until November 6,
12 2009. Thus, the action appears to be time-barred.
13

14 Plaintiff asserts that he did not discover Defendants' actions
15 until April 2009. (See Complaint at 5). However, a declaration
16 attached to the Complaint indicates that Plaintiff's defense attorney
17 may have had reason to know of such actions during Plaintiff's trial in
18 2004 or soon after. (See Complaint, exh. A at 2-3). Two other
19 declarations—one by a party in the custody matter in which the mail was
20 allegedly used; and one by that party's attorney in the custody
21 matter—indicate that the declarants knew of Deputy Munoz's conduct in
22 early 2004. (See id., exh. A at 4-7). If Plaintiff chooses to amend
23 the Complaint, he is advised to consider this statute of limitations
24 issue.
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CONCLUSION

If Plaintiff still wishes to pursue this action, he is granted thirty (30) days from the date of this Memorandum and Order within which to file a First Amended Complaint, curing the defects in the Complaint described above. The First Amended Complaint, if any, shall be complete in itself and shall bear both the designation "First Amended Complaint" and the case number assigned to this action. It shall not refer in any manner to the original Complaint. The caption of any Amended Complaint must identify all parties that Plaintiff is suing. Each page of the First Amended Complaint must be consecutively numbered.

In any amended complaint, Plaintiff should confine his allegations to those operative facts supporting each of his claims. Plaintiff is advised that pursuant to Federal Rule of Civil Procedure 8(a), all that is required is a "short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiff is strongly encouraged to utilize the standard civil rights complaint form when filing any amended complaint, a copy of which is attached. Plaintiff should make clear which defendant committed a particular act of misconduct. Individuals who have not engaged in any alleged misconduct should not be named as defendants. It is not necessary for Plaintiff to cite case law or include legal argument. Moreover, irrelevant exhibits or other extraneous documents are not necessary for Plaintiff to include with his complaint.

27 Plaintiff is explicitly cautioned that failure to timely file a
28 First Amended Complaint, or failure to correct the deficiencies

1 described above, will result in a recommendation that this action be
2 dismissed for failure to prosecute pursuant to Federal Rule of Civil
3 Procedure 41(b). Plaintiff is further advised that, if he does not wish
4 to pursue this action, he may voluntarily dismiss it by filing a notice
5 of dismissal in accordance with Federal Rule of Civil Procedure
6 41(a)(1). A sample notice is attached to this order as well.

7 *Dec. 1, 2009*
8 DATED: November *30*, 2009

Suzanne H. Segal
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10 SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

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FULL NAME	
COMMITTED NAME (if different)	
FULL ADDRESS INCLUDING NAME OF INSTITUTION	
PRISON NUMBER (if applicable)	

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PLAINTIFF, <small>v.</small> DEFENDANT(S).	CASE NUMBER <hr/> <i>To be supplied by the Clerk</i>
CIVIL RIGHTS COMPLAINT PURSUANT TO <i>(Check one)</i>	
<input type="checkbox"/> 42 U.S.C. § 1983 <input type="checkbox"/> Bivens v. Six Unknown Agents 403 U.S. 388 (1971)	

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner: Yes No
2. If your answer to "1." is yes, how many? _____

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)

a. Parties to this previous lawsuit:

Plaintiff _____

Defendants _____

b. Court _____

c. Docket or case number _____

d. Name of judge to whom case was assigned _____

e. Disposition (For example: Was the case dismissed? If so, what was the basis for dismissal? Was it appealed? Is it still pending?) _____

f. Issues raised:

g. Approximate date of filing lawsuit: _____

h. Approximate date of disposition _____

B. EXHAUSTION OF ADMINISTRATIVE REMEDIES

1. Is there a grievance procedure available at the institution where the events relating to your current complaint occurred? Yes No

2. Have you filed a grievance concerning the facts relating to your current complaint? Yes No

If your answer is no, explain why not _____

3. Is the grievance procedure completed? Yes No

If your answer is no, explain why not _____

4. Please attach copies of papers related to the grievance procedure.

C. JURISDICTION

This complaint alleges that the civil rights of plaintiff _____
(print plaintiff's name)

who presently resides at _____
(mailing address or place of confinement)

were violated by the actions of the defendant(s) named below, which actions were directed against plaintiff at

(institution/city where violation occurred)

on (date or dates) _____, _____, _____.
(Claim I) (Claim II) (Claim III)

NOTE: You need not name more than one defendant or allege more than one claim. If you are naming more than five (5) defendants, make a copy of this page to provide the information for additional defendants.

1. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

2. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

3. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

4. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

5. Defendant _____ resides or works at
(full name of first defendant)

(full address of first defendant)

(defendant's position and title, if any)

The defendant is sued in his/her (Check one or both): individual official capacity.

Explain how this defendant was acting under color of law:

D. CLAIMS*

CLAIM I

The following civil right has been violated:

Supporting Facts: Include all facts you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be certain you describe, in separately numbered paragraphs, exactly what each DEFENDANT (by name) did to violate your right.

**If there is more than one claim, describe the additional claim(s) on another attached piece of paper using the same outline.*

E. REQUEST FOR RELIEF

I believe that I am entitled to the following specific relief:

(Date)

(Signature of Plaintiff)

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

<p style="text-align: center;">v.</p> <p style="text-align: center;">Plaintiff(s),</p> <p style="text-align: center;">Defendant(s).</p>	<p style="text-align: center;">CASE NUMBER _____</p> <p style="text-align: center;">NOTICE OF DISMISSAL PURSUANT RULE 41(a) or (c) F.R.Civ.P.</p>
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PLEASE TAKE NOTICE: (Check one)

- This action is dismissed by the Plaintiff(s) in its entirety.
- The Counterclaim brought by Claimant(s) _____ is dismissed by Claimant(s) in its entirety.
- The Cross-Claim brought by Claimants(s) _____ is dismissed by the Claimant(s) in its entirety.
- The Third-party Claim brought by Claimant(s) _____ is dismissed by the Claimant(s) in its entirety.
- ONLY Defendant(s) _____**

is/are dismissed from (*check one*) Complaint, Counterclaim, Cross-claim, Third-Party Claim brought by _____.

The dismissal is made pursuant to Rule 41(a) or (c) of the Federal Rules of Civil Procedure.

Date

Signature of Attorney/Party

NOTE: F.R.Civ.P. 41(a): This notice may be filed at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs.

F.R.Civ.P. 41(c): Counterclaims, cross-claims & third-party claims may be dismissed before service of a responsive pleading or prior to the beginning of trial.